

Pendaftar Pertubuhan v Datuk Justin Jinggut

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FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–4–03 OF 2012(W)

ABDULL HAMID EMBONG, SURIYADI, AHMAD MAAROP,
ZALEHA ZAHARI AND SULONG MATJERAIE FCJJ

17 JANUARY 2013

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Unincorporated Associations — Societies — Political party — Whether action by Registrar of Societies ('ROS') to de-register political party arbitrary, ultra vires and void — Whether result of party's failure to show evidence dispute over rightful office-bearers of party had been settled — Whether s 13 of the Societies Act 1966 compelled ROS to de-register party — Whether ROS' opinion of existence of dispute subjective without need to make 'finding' or determine validity of meetings of disputing parties — Whether ROS required to give reasons for de-registering society — Societies Act 1966 ss 16(1) & 13

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When a leadership crisis broke out in the year 2002 within the Parti Kebangsaan Sarawak ('SNAP') — a political society which was registered under the Societies Act 1966 ('the Act') — and the two warring factions, one led by the President and the other by the Deputy President claimed their respective factions were the rightful leaders and office-bearers of the party, the Registrar of Societies ('ROS') issued SNAP an ultimatum to put its house back in order or face de-registration. In its notice issued under s 16(1) of the Act, ROS informed SNAP that he was of the opinion a dispute had arisen over who were the rightful office-bearers of the party and the party was required to show evidence the dispute had been settled or that proceedings towards its settlement had been commenced and that the lawful office-bearers had been properly appointed. In response to the notice, each faction denounced the other and claimed their respective group was the legitimate office-bearers. This caused ROS to issue a notice under s 13(2) of the Act that he would de-register SNAP unless reasons why he should not do so were furnished to him within a month. When the respective factions again maintained their stand as before, ROS gave notice he was cancelling the registration of the party pursuant to s 13(1)(c)(ix) of the Act ('the decision'). The respondent, who was SNAP's Secretary-General, and the President (who subsequently withdrew as a party to the application) jointly applied to the High Court to quash the decision and declare it null and void. The High Court dismissed the application holding, inter alia, that: (i) ss 16(1) and 13 of the Act did not require ROS to give reasons for his decision; nor did they give the respondent a right to be heard before ROS could 'form an opinion that a dispute had occurred or that ROS was not satisfied of the identity of persons who had been properly appointed as officer-bearers'; and (ii) the facts clearly showed a dispute existed and ROS had acted correctly in

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- A cancelling SNAP's registration as the party failed to comply with what was sought under the s 16(1) notice. The Court of Appeal set aside the High Court's decision holding, inter alia, that ROS' decision to de-register SNAP was arbitrary, ultra vires and void, that ROS had acted in excess of his jurisdiction and that given the facts before him ROS had not exercised his discretion in accordance with law. The Federal Court granted ROS leave to appeal against the Court of Appeal's decision on the questions: (i) whether under s 16(1) ROS had power to determine the validity of the meetings of the disputing parties before deciding a dispute over the identity of the office-bearers existed; (ii) whether the court on considering the facts of the case objectively could rule that no such dispute existed such as to warrant ROS to issue the s 16(1) notice; (iii) whether on reading s 16 with s 13(2), ROS had to act mechanically, or whether he had discretion, to cancel a society's registration if the conditions in s 16(1) were not satisfied; and (iv) whether ROS was required to give reasons if he decided to de-register a society for failing to comply with s 16(1).
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Held, allowing the appeal with costs, setting aside the Court of Appeal's decision and restoring the decision of the High Court:

- E (1) On a literal interpretation of s 16(1) of the Act, ROS was not empowered to inquire into the validity of the meetings of the disputing parties in order to form an opinion regarding the existence of a dispute. ROS merely needed to act on the documents presented to him to objectively decide if a dispute had arisen. Once he was satisfied, on a subjective test, that a dispute had in fact occurred, he could straight away form such an opinion. This was his only statutory duty. Under s 16(1) the power given to ROS was to direct a society to settle its dispute. There was no power to determine if meetings held by the disputing parties were valid or not. ROS did not need to make a finding. He merely came to an opinion on the existence of a dispute (see paras 29–30).
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- H (2) Unlike the situation involving Mutual Benefit Societies under Part II of the Act where ROS was empowered to hear and determine any disputes (see s 40(3) of the Act), s 16(1) had to be given a narrow interpretation limiting the scope of the duty of ROS to that of only giving an opinion as to the existence of a dispute and directing that society to settle the dispute by serving it a notice. And in the event of non-compliance of that notice, ROS may de-register the society under s 13(1)(c)(ix) of the Act (see para 31).
- I (3) The court could not go behind the opinion stated by ROS and, based on the factual background, make its own finding on the validity of the dispute as this would be usurping the limited powers of ROS under s 16(1) and substituting its opinion in place of the subjective opinion of

ROS. In any event, s 18C of the Act excluded the jurisdiction of the Courts from going into the merits of any disputes between members of a political party (see paras 36–37).

- (4) If evidence of settlement to the dispute was not forthcoming from SNAP and if ROS was satisfied there was failure to comply with the s 16(1) notice, he ‘may’ cancel the registration of SNAP. This was an exercise of discretion by ROS. But in so doing, the Act provided him only two bases when deciding to de-register SNAP. He could not consider other matters outside the ambit of ss 16(1) and 13. In that sense his discretion was fettered within the confines of the law. It was in this regard that ROS had to act mechanically within his mandate under s 13(1)(c) of the Act (see paras 46–47).
- (5) ROS had not acted arbitrarily in this case. The decision to de-register SNAP was consequential to SNAP’s failure to comply with the s 16(1) notice. Once the conditions stated in the s 16(1) notice were not satisfied, the operation of s 13 was triggered. No reasons were required or needed to be given under the law. ROS was not required to conduct any formal hearing before he exercised his power under s 13. No presentation of testimony, evidence or arguments was needed. It was not a judicial adjudication process (see paras 49, 52–53).
- (6) There was no evidence of any bad faith or bias against SNAP when ROS acted to de-register the party. His action was more administrative than quasi-judicial even though the rights of SNAP were affected (see para 53).

[Bahasa Malaysia summary]

Apabila krisis kepimpinan berlaku pada tahun 2002 dalam Parti Kebangsaan Sarawak (‘SNAP’) — persatuan politik yang didaftarkan di bawah Akta Persatuan 1966 (‘Akta tersebut’) — dan dua puak yang bermusuhan, satu diketuai oleh Presiden dan satu lagi oleh Timbalan Presiden yang mendakwa puak masing-masing adalah ketua dan pemegang jawatan sah parti itu, Pendaftar Persatuan (‘PP’) telah mengeluarkan amaran terakhir yang mesti dipatuhi dalam tempoh tertentu agar keadaan parti kembali teratur atau berhadapan dengan pembatalan pendaftaran. Dalam notisnya yang dikeluarkan di bawah s 16(1) Akta tersebut, PP memberitahu SNAP bahawa dia berpendapat pertikaian itu telah timbul berhubung siapakah pemegang jawatan parti yang sah dan parti itu dikehendaki menunjukkan bukti pertikaian itu telah diselesaikan atau bahawa prosiding untuk penyelesaiannya telah bermula dan bahawa pemegang jawatan yang sah itu dilantik dengan betul. Sebagai menjawab kepada notis itu, setiap puak saling mengutuk satu sama lain dan mendakwa kumpulan mereka adalah pemegang jawatan yang sah. Ini telah menyebabkan PP mengeluarkan notis di bawah s 13(2) Akta tersebut bahawa dia akan membatalkan pendaftaran SNAP kecuali jika alasan-alasan kenapa dia tidak patut berbuat demikian dikemukakan

- A kepadanya dalam tempoh sebulan. Apabila puak-puak tersebut sekali lagi menegaskan pendirian mereka seperti sebelumnya, PP telah memberi notis yang dia membatalkan pendaftaran parti itu menurut s 13(1)(c)(ix) Akta tersebut ('keputusan tersebut'). Responden yang merupakan Ketua Setiausaha, dan Presiden (yang kemudian menarik diri sebagai pihak kepada permohonan itu) telah secara bersama memohon kepada Mahkamah Tinggi untuk membatalkan keputusan tersebut dan mengisytiharkannya terbatal dan tidak sah. Mahkamah Tinggi telah menolak permohonan itu dengan memutuskan, antara lain, bahawa: (i) ss 16(1) dan 13 Akta tersebut tidak menghendaki PP memberikan alasan-alasan untuk keputusannya; mahupun mereka memberikan responden hak untuk didengar sebelum PP boleh 'form an opinion that a dispute had occurred or that ROS was not satisfied of the identity of persons who had been properly appointed as officer-bearers'; dan (ii) fakta jelas menunjukkan pertikaian wujud dan PP telah bertindak sewajarnya dengan membatalkan pendaftaran SNAP sebagai pihak yang gagal mematuhi apa yang telah dipohon di bawah notis s 16(1). Mahkamah Rayuan telah mengetepikan keputusan Mahkamah Tinggi dengan memutuskan, antara lain, keputusan PP untuk membatalkan pendaftaran SNAP adalah sewenang-wenang, ultra vires dan tidak sah, bahawa PP telah bertindak melampaui bidang kuasanya dan berdasarkan fakta di hadapannya PP telah tidak melaksanakan budi bicaranya menurut undang-undang. Mahkamah Persekutuan memberikan PP kebenaran untuk merayu terhadap keputusan Mahkamah Rayuan berhubung persoalan-persoalan: (i) sama ada di bawah s 16(1) PP mempunyai kuasa untuk menentukan kesahan mesyuarat pihak-pihak yang mempunyai pertikaian sebelum memutuskan pertikaian berhubung identiti pemegang jawatan wujud; (ii) sama ada mahkamah dalam mengambil kira fakta kes secara objektif boleh memutuskan bahawa tiada apapun pertikaian yang wujud sehingga mewajarkan PP mengeluarkan notis s 16(1); (iii) sama ada dengan membaca s 16 bersama s 13(2), PP telah bertindak secara mekanikal, atau sama ada dia mempunyai budi bicara, untuk membatalkan pendaftaran persatuan jika syarat-syarat dalam s 16(1) tidak dipenuhi; dan (iv) sama ada PP dikehendaki memberikan alasan-alasan jika dia memutuskan untuk membatalkan pendaftaran persatuan kerana gagal mematuhi s 16(1).
- H **Diputuskan**, membenarkan rayuan dengan kos, mengetepikan keputusan Mahkamah Rayuan dan mengekalkan keputusan Mahkamah Tinggi:
- I (1) Berdasarkan pentafsiran harfiah s 16(1) Akta tersebut, PP tidak diberi kuasa untuk mempersoalkan kesahan mesyuarat pihak-pihak yang mempunyai pertikaian bagi tujuan membentuk pendapat berhubung kewujudan satu pertikaian. PP hanya perlu bertindak berdasarkan dokumen-dokumen yang dikemukakan kepadanya untuk membuat keputusan secara objektif jika satu pertikaian telah wujud. Setelah dia berpuas hati, berdasarkan ujian subjektif, bahawa satu pertikaian telah

- berlaku, dia boleh terus membentuk suatu pendapat. Ini adalah satu-satunya kewajipan statutorinya. Di bawah s 16(1) kuasa yang diberikan kepada PP adalah untuk mengarahkan suatu persatuan itu menyelesaikan pertikaianya. Tiada kuasa untuk menentukan jika mesyuarat yang diadakan oleh pihak-pihak yang mempunyai pertikaian itu adalah sah atau tidak. PP tidak perlu membuat penemuan. Dia hanya perlu memberi pendapat berhubung kewujudan pertikaian (lihat perenggan 29–30). A
- (2) Tidak seperti keadaan yang melibatkan *Mutual Benefit Societies* di bawah Bahagian II Akta tersebut di mana PP diberi kuasa untuk mendengar dan menentukan apa-apa pertikaian (lihat s 40(3) Akta tersebut), s 16(1) perlu diberikan pentafsiran terhad yang mengehadkan skop kewajipan PP yang hanya memberikan pendapat berhubung kewujudan pertikaian dan mengarahkan persatuan tersebut menyelesaikan pertikaian dengan menyampaikan kepadanya notis. Dan sekiranya notis tersebut tidak dipatuhi, PP boleh membatalkan pendaftaran persatuan itu di bawah s 13(1)(c)(ix) Akta tersebut (lihat perenggan 31). B
- (3) Mahkamah tidak boleh membelakangi pendapat yang dinyatakan oleh PP dan, berdasarkan latar belakang fakta, membuat penemuannya sendiri berhubung kesahan pertikaian itu kerana ini akan merampas kuasa terhad PP di bawah s 16(1) dan menggantikan pendapatnya dengan pendapat subjektif PP. Dalam apa keadaan, s 18C Akta tersebut mengecualikan bidang kuasa mahkamah daripada meneliti merit apa-apa pertikaian antara ahli-ahli parti politik (lihat perenggan 36–37). C
- (4) Jika keterangan penyelesaian kepada pertikaian itu tidak membantu daripada SNAP dan jika PP berpuas hati terdapat kegagalan untuk mematuhi notis s 16(1), dia ‘may’ membatalkan pendaftaran SNAP. Ini adalah pelaksanaan budi bicara oleh SNAP. Namun dengan berbuat demikian, Akta tersebut memberikannya hanya dua asas dalam membuat keputusan untuk membatalkan pendaftaran SNAP. Dia tidak boleh mempertimbangkan perkara lain di luar skop ss 16(1) dan 13. Jika begitu budi bicaranya terbelenggu dalam lingkungan undang-undang. Dalam keadaan berikut PP telah bertindak secara mekanikal dalam mandatnya di bawah s 13(1)(c) Akta tersebut (lihat perenggan 46–47). D
- (5) PP tidak bertindak sewenang-wenangnya dalam kes ini. Keputusan untuk membatalkan pendaftaran SNAP adalah akibat daripada kegagalan SNAP mematuhi notis s 16(1). Apabila syarat-syarat yang dinyatakan dalam notis s 16(1) tidak dipenuhi, operasi s 13 bermula. Tiada alasan diperlukan sebelum dia melaksanakan kuasanya di bawah s 13. Tiada pengemukaan keterangan, bukti atau hujah diperlukan. Ia bukan satu proses pengadilan kehakiman (lihat perenggan 49, 52–53). E
- (6) Tiada apa-apa bukti niat jahat atau berat sebelah terhadap SNAP apabila F
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- A PP bertindak untuk membatalkan pendaftaran parti itu. Tindakannya lebih bersifat pentadbiran daripada kuasi-kehakiman meskipun hak-hak SNAP terjejas (lihat perenggan 53).]

Notes

- B For cases on political party, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 3141–3147.

Cases referred to

- C *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2008] 5 MLJ 773, CA (refd)
Council of Civil Service Union and Others v Minister for the Civil Service [1985] AC 374, HL (refd)
Electrical Industry Workers Union v Registrar of Trade Union & Anor [1976] 1 MLJ 177, FC (refd)
- D *Gasing Meridien Sdn Bhd v Datuk Bandar Kuala Lumpur* [2004] 1 CLJ 219, CA (refd)
Minister of Labour, Malaysia v Sanjiv Oberoi & Anor [1990] 1 MLJ 112; [1990] 1 CLJ 200, SC (refd)
Padfield v Minister of Agriculture Fisheries and Food [1968] 1 All ER 694, HL (refd)
- E *Pendaftar Pertubuhan Malaysia v PV Das (Bagi Pihak People's Progressive Party of Malaysia (PPP)) (Datuk M Kayveas, intervener)* [2003] 3 MLJ 449; [2003] 3 CLJ 404, CA (refd)
- F *Public Services Commission & Anor v Vikneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimuthu, deceased)* [2008] 6 MLJ 1; [2008] 6 CLJ 573, FC (refd)
Rohana bte Ariffin & Anor v Universiti Sains Malaya [1989] 1 MLJ 487, HC (refd)
- G *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, HL (refd)
Union of Beverage Industry Workers, Federation of Malaya & Anor v Syed Shahir Syed bin Syed Mohamud (sued as President of MTUC) & Ors [2005] 6 MLJ 43; [2005] 2 CLJ 883, HC (folld)

H Legislation referred to

Federal Constitution arts 8, 10, 10(1), (c)
Societies Act 1966 ss 3A, 7, 7(2)(c), 13, 13(1), (1)(c), (1)(c)(ix), (2), 16, 16(1), (2), 18C, 40(3), Part II

I Appeal from: Civil Appeal No W-01–113 of 2009 (Court of Appeal, Putrajaya)

Azizah Nawawi (Amarjeet Singh with her) (Senior Federal Counsel, Attorney General's Chambers) for the appellant.

Khoo Guan Huat (Skrine) for the respondent.

A

Abdull Hamid Embong FCJ (delivering judgment of the court):

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BACKGROUND FACTS

[1] The late Datuk Amar James Wong Kim Min and the respondent were at the material time, respectively the duly elected president and Secretary General of Parti Kebangsaan Sarawak ('SNAP'). SNAP was registered as a political society under the Societies Act 1966 ('the Act') on 10 April 1961.

C

[2] In 2002, a leadership crisis occurred within SNAP between two groups. One group was led by the president, whilst the other was led by the deputy president, Dato' Sri Peter Tinggom.

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[3] Trouble surfaced when the deputy president, in the absence of the president, convened a Central Executive Council ('CEC') meeting of the party on 29 May 2002. At this meeting, five additional CEC members were appointed and, inter alia, it was resolved that it was necessary for a national council meeting to be convened and fixed 9 June 2002 as the date for the meeting. However, the national council meeting scheduled on 9 June 2002 was aborted due to an injunction issued on the application of the president.

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[4] The president had, on 7 June 2002, ie two days before the national council meeting, called for and presided over another CEC meeting comprising of members aligned to him. In the meeting, they condemned the CEC meeting held on 24 May 2002 that was called and presided by the deputy president and declared that meeting to be illegal.

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[5] On 22 June 2002, the president suspended the deputy president's membership in SNAP. The suspension was confirmed by another CEC meeting aligned to the president held on 27 June 2002.

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[6] Meanwhile, the injunction taken out by the president was set aside by order dated 9 June 2002. With the injunction set aside, the national council meeting as proposed by the group aligned to the deputy president was held on 23 June 2002. At that national council meeting, the president, vice president, secretary general, deputy and assistant secretary general were suspended. The deputy president assumed the post and duties as acting president.

I

[7] With the above development brewing in SNAP, the appellant, ie registrar

- A of societies ('the ROS') on 2 July 2002, issued a notice under s 16(1) of the Act informing SNAP that he was of the opinion that a dispute had occurred among the office bearers of SNAP, as a result of which he was not satisfied as to the identities of the persons who had been properly constituted as the office bearers of SNAP. Hence, SNAP was asked to produce evidence of a settlement of the dispute and of a proper appointment of the lawful office bearers of SNAP or of the institution of proceedings towards the settlement of the dispute.
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- C [8] On 19 July 2002, the respondent responded to the ROS notice stating that the president's group was the lawful office bearers of SNAP and claimed that the actions taken by the group led by the deputy president were illegal and ultra vires the party's constitution.

- D [9] The ROS had also received a reply from the group led by the deputy president. In the letter dated 26 July 2002, the deputy president's group defended the legitimacy of their CEC meeting as well as the national council meeting held on 23 June 2002 and the decisions taken at those meetings.

- E [10] The ROS, by a letter dated 13 September 2002 issued another notice, this time under s 13(2) of the Act, where a notification on his proposal to cancel the registration of SNAP was given unless SNAP could furnish reasons within one month why it should not be de-registered.

- F [11] The president's group replied to the notice in a letter dated 22 September 2002. They reiterated their contention that they were the lawful office bearers of SNAP and the action taken by the group led by the deputy president was illegal and ultra vires the party's constitution.

- G [12] Further, in a letter dated 25 September 2002, the president's group informed the ROS that the CEC, which was called by the deputy president in the absence of the president, was illegal and unconstitutional.

- H [13] The deputy president's group also responded to the ROS's notice under s 13(2) of the Act. In a letter dated 4 October 2002, the deputy president's group stated that they were the lawful office bearers of SNAP and instead claimed that the acts done by the president were illegal and unconstitutional.

- I [14] On 5 November 2002, the ROS issued his decision to cancel the registration of SNAP under s 13(1)(c)(ix) of the Act.

PROCEEDINGS IN THE HIGH COURT

- I [15] The president and the respondent, after leave being given, filed an application in the High Court seeking, inter alia, for the following reliefs:
- (a) an order of certiorari to quash the decision of the ROS dated 5 November 2002 in cancelling the registration of SNAP; and

- (b) a declaration that the decision of the ROS dated 5 November 2002 in cancelling the registration of SNAP is void and of no effect. **A**

[16] However on 28 November 2005, the president withdrew as a party to the application. The application was proceeded with only by the respondent alone. **B**

[17] Before the High Court, the respondent relied on two main grounds to quash the decision of the ROS, namely:

- (a) procedural unfairness; and **C**
(b) substantive unfairness.

[18] On 15 September 2006, the High Court dismissed the respondent's application with costs. **D**

[19] On the first ground, the learned trial judge held that:

18. ... the issue of non-disclosure is no longer an issue. I have dealt with this issue in the applicants' earlier application for discovery, where I have accepted the ROS averment that all documents pertaining to his decision making process were before the court ... Hence, the allegation of non-disclosure of documents by the applicant remains a mere allegation. **E**

19. ... Further, I am of the view that the scheme of ss 16 and 13 of the Act does not require the ROS to give the applicant the right to be heard before the ROS is to 'to form an opinion that a dispute had occurred or that the ROS was not satisfied of the identity of the persons who have been properly appointed as office bearers'. To subscribe to the applicant's submission would tantamount to adding words to the sections which this court must always 'guard itself against adding words which were never intended by Parliament' ... **F**
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21. With respect, I am unable to agree with the applicant. Firstly, it is an established position of law that there is no general duty universally imposed on all decision makers to give reasons for their decision. Secondly, ss 16(1) and 13 of the Act do not require the ROS to give reasons for his decision. There is no express statutory duty imposed on the ROS to give reasons to the applicant. **H**

[20] On the second ground, the learned trial judge held that:

25. ... The first issue raised by the applicant was that the decision of the ROS to de-register SNAP was disproportionate and too severe a measure to be taken against a society as established as SNAP. My short answer is that, it is not the duty of this court to substitute its own view as to what is the appropriate or lesser measure ought to be taken by the ROS. **I**

- A** 26. The second and third issues raised by the applicant under this heading is that the ROS had taken irrelevant considerations in arriving to an opinion that a dispute had risen in SNAP and hence had acted in excess of jurisdiction in de-registering SNAP. With respect I am unable to hold as such. The affidavit of the first applicant in support of this application clearly shows the existence of a 'dispute' between the
- B** group led by the president and the other group led by the deputy president. The first applicant in his letter to the ROS confirmed the dispute when he stated that in the absence of the president, another team led by the deputy president had tried to 'usurp the leadership' by unconstitutional acts such as to convene CEC meeting, national council meeting and the EGM. In another exhibit is a letter from the other
- C** group clearly shows that a parallel CEC led by the deputy president held a national council meeting on 23 June 2002 and had passed several resolutions including the appointment of the deputy president assuming the post and duties as acting president and suspending the duties of the president and several others.
- D** 27. To me, on the facts of this case is beyond doubt that a dispute does exist within SNAP. Accordingly, the ROS was right to issue the notice under s 16(1) and subsequently under s 13(2) of the Act. As the ROS was not furnished with the evidence of settlement of the dispute or institution of proceedings for settlement of the dispute, the ROS was right to cancel the registration of SNAP. To me, what the ROS did was merely complying with the statutory provisions of the Act.

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PROCEEDINGS IN THE COURT OF APPEAL

- F** [21] On appeal, the Court of Appeal on 23 June 2011 allowed the respondent's appeal with costs and set aside the decision of the High Court.

[22] In its judgment, the Court of Appeal held, inter alia, as follows:

- G** We therefore disagree with the learned High Court judge when he found that 'discovery is not relevant because the respondent has averred that all the documents pertaining to his decision-making process are before the court and there is no evidence adduced by the applicant to show that the materials put before the court are inaccurate or false'.
- H** This drastic power could not have been contemplated to have existed in a vacuum. It is our view that the discretion given the respondent in s 16(1) is not unfettered. In scrutinising the documents before us and the legal position of this appeal, we find that the respondent had not exercised his discretion in accordance with the law. In fact, in deciding the way he did, in view of the facts before him, we find that his was an arbitrary decision.
- I** In view of the above, it is our view that the respondent's decision embodied in his letter of notice dated 5 November 2002 purporting to cancel the registration of SNAP was ultra vires and void and the respondent had thus acted in excess of his jurisdiction.

[23] Leave of this court was granted to the ROS on these four questions: A

Question 1

Sama ada pendaftar pertubuhan mempunyai kuasa di bawah s 16(1) Akta Pertubuhan 1966 untuk memutuskan kesahihan mesyuarat-mesyuarat pihak-pihak dalam pertikaian sebelum memutuskan terdapat pertikaian mengenai identity pemegang-pemegang jawatan. B

(Whether the ROS has any power under s 16(1) of the Societies Act 1966 to determine the validity of the meetings of parties in the dispute before he decided that a dispute had arisen pertaining to identity of the office-bearers.) C

Question 2

Sama ada mahkamah, setelah menimbang fakta kes secara objektif, boleh memutuskan bahawa tidak terdapat pertikaian mengenai identity pemegang-pemegang jawatan bagi membolehkan pendaftar pertubuhan untuk mengeluarkan notis di bawah s 16(1) Akta Pertubuhan 1966. D

(Whether the court, having considered the facts of the case objectively, can decide that there is no dispute pertaining to the identity of the office-bearers to enable the ROS to issue the notice under s 16(1) of Act 335.) E

Question 3

Sama ada di bawah s 16 dibaca bersama s 13(2) Akta Pertubuhan 1966, pendaftar pertubuhan hendaklah bertindak secara mekanikal atau mempunyai budi bicara untuk membatalkan pendaftaran sesuatu pertubuhan sekiranya syarat-syarat di bawah s 16(1) tidak dipatuhi. F

(Whether under s 16 read with s 13(2) of Act 335, the ROS needs to act mechanically or does he have any discretion to cancel the registration of a society if the conditions in s 16(1) have not been satisfied.) G

Question 4

Sama ada di bawah s 16 dibaca bersama s 13 Akta Pertubuhan 1966, pendaftar pertubuhan dikehendaki untuk memberikan alasan-alasan bagi keputusan beliau untuk membatalkan pendaftaran sesuatu pertubuhan sekiranya syarat-syarat di bawah s 16(1) tidak dipatuhi. H

(Whether, under s 16 read with s 13 of Act 335, the ROS is required to give any reasons for his decision to cancel the registration of a society for failing to comply with the requirements of s 16(1).) I

Question 1

[24] It was the contention of the respondent that the first threshold to pass

- A before invoking s 16(1) of the Act is for the ROS to form an opinion of the existence of a dispute. And this he can only do after examining the facts and circumstances to determine if a 'real dispute' had arisen. The ROS must thus first decide if there was a valid dispute, and cannot act on a mere allegation; otherwise his opinion cannot be said to be an independent one, and capable of being challenged in court; citing as authority the case of *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014.
- B

And reference was made to this commentary by MP Jain in *Administration Law in Malaysia and Singapore*, (2nd Ed), stating that:

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- When discretion is conferred on an authority, it must personally exercise the same; it must apply its own mind to the facts and circumstances of each case and come to its own decision. If the authority acts without applying its mind to the case before it, then the action or decision taken by it will be bad. In such a situation, the authority is deemed to have failed to exercise its discretion.
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- [25] It was also contended that the failure of the ROS to verify the facts subsequently relied upon by him would run the risk of arriving at an irrational decision, in the sense that the decision can be so 'outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it ...' (*Council of Civil Service Union and Others v Minister for the Civil Service* [1985] AC 374) ie the Wednesbury unreasonableness argument.
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- [26] It was thus submitted that the ROS was duty-bound to inquire into the validity of the meetings leading to the dispute in order to form an opinion whether any dispute really existed. Learned counsel for the respondent added that it is within the power of the ROS to make such inquiries (ss 3A, 7 and 13 of the Act, were referred to).
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- [27] On the ouster provision under s 18C of the Act, it was submitted by the respondent that this will only take effect after any decision made by the political party is found to be valid and authorised by its constitution. Thus it entails the examination by the ROS of the validity of the processes from which those impugned decisions originated including the meetings during which those decisions were made.
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- [28] In short, the stand taken by the respondent is that s 16(1) should only be invoked when all of the conditions under that section are satisfied, and that a dispute had in fact occurred. It was thus incumbent upon the ROS to look into all the meetings held by the disputing parties here, in order to determine on the existence of a dispute resulting in the identity of the office bearers being in doubt.
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[29] With respect, we are unable to agree with the stand taken by the respondent. This appeal involves the statutory interpretation of s 16 of the Act and s 13 of the Act. On a literal interpretation of s 16(1) of the Act we are of the view that the ROS is not empowered to inquire into the validity of those meetings referred to in order to form an opinion regarding the existence of a dispute. The ROS merely needs to act on the documents presented to him to objectively decide if a dispute had arisen. Once he is satisfied, and here we say on a subjective test, that a dispute had in fact occurred, he may straight away form such an opinion. We say that this is his only statutory duty. The word 'opinion' as found in s 16(1) entails a subjective evaluation by the ROS. It is defined in the *Concise Oxford Dictionary* as 'according to one's view or belief'. He forms this opinion based on the documents and information before him. He need not inquire into the meetings to determine if they are in compliance with SNAP'S constitution. No detective work is required of the ROS to form this opinion. Otherwise the office of the ROS would be bogged down to make unnecessary inquiries each time he is faced with an information of a dispute having occurred in a political society.

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[30] Under s 16(1) of the Act the power given to the ROS is to direct a society to settle its dispute. There is no power to determine if meetings held by the disputing parties are valid or not. The ROS need not make a finding. He merely comes to an opinion of the existence of a dispute. And this he needs to do as quickly as possible. Otherwise, the fate of a society will be left in a limbo, and all its activities suspended. To make inquiries into those meeting as suggested by the respondent would delay the whole process. The other rationale stemming out of s 7(2)(c) of the Act is that any dispute between the parties in a society should, if possible, be determined by the members of that society itself. It provides that the ROS may refuse to register a society where the members are in dispute, until, inter alia, that dispute is settled by agreement between the parties.

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[31] We say that the ROS role is one of non-interference in a dispute situation involving a political society, such as SNAP here. This is unlike the situation involving Mutual Benefit Societies under Part II of the Act where the ROS is empowered to hear and determine any disputes (see s 40(3) of the Act). Section 16(1) of the Act thus has to be given a narrow interpretation limiting the scope of the duty of the ROS to that of only giving an opinion to the existence of a dispute and directing that society to settle the dispute by serving a notice to it. And in the event of a non-compliance of that notice the ROS may de-register the society under s 13(1)(c)(ix) of the Act.

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[32] We are in agreement with this remarks made by Raus J (as the PCA was

A then) in *Union of Beverage Industry Workers, Federation of Malaya & Anor v Syed Shahir Syed bin Syed Mohamud (sued as President of MTUC) & Ors* [2005] 6 MLJ 43; [2005] 2 CLJ 883, who said:

B In fact there is nothing in s 16 which states that the registrar shall determine the dispute or adjudicate upon it. It only provides that if the Registrar is of the opinion that a dispute has occurred among members of office bearers, the registrar may serve notice on the society requiring evidence of settlement of the dispute or institution of the proceedings for settlement of such dispute. According to s 16(2) if such notice is not complied with, the registrar within one month or any extension thereof may cancel the registration of the society.

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[33] We therefore answer Question 1 in the negative.

Question 2

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E [34] This question is closely related to the first question which we had answered. The respondent submitted that the court through a process of judicial review, is at liberty to intervene, and itself make a finding as to the existence of a dispute on the identity of the office bearers properly constituted if the manner in which the ROS made his decision was wrong. In other words, the court is now urged to grant consequential relief instead of merely quashing the decision of the ROS (*Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2008] 5 MLJ 773 was cited in support).

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[35] As we said earlier, s 16(1) of the Act does not empower the ROS to take the further step of making inquiries into the validity of the meetings to ascertain if a dispute had arisen.

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[36] In our considered view, for the court to go behind the opinion stated by the ROS and make its own finding based on the factual background on the validity of the dispute, this would be usurping the limited powers of the ROS under s 16(1). The court would then have to substitute the subjective opinion of the ROS. In other words, it would take over the role of the ROS, which we say we cannot do. In *Public Services Commission & Anor v Vikneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimutu, deceased)* [2008] 6 MLJ 1; [2008] 6 CLJ 573, it was held that:

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I From the provisions of the general orders it is clear that *it is never the intention of the legislators that the courts should step into the shoes of the disciplinary authority in deciding* whether it was fair to the respondent to have granted him a right to make oral representations or whether he should be given such right although he did not ask for it. (Emphasis added.)

And in *Gasing Meridien Sdn Bhd v Datuk Bandar Kuala Lumpur* [2004] 1 CLJ

219, Abdul Hamid Mohamed then JCA, said that ‘It is the Commissioner who has to be satisfied. It is not for the court to be satisfied and then force it on the Commissioner’.

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[37] We agree with the learned senior federal counsel, for the ROS who submitted that, in any event, s 18C of the Act clearly excludes the jurisdiction of the courts from going into the merits of any disputes between members of a political party. Section 18C states that:

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Decision of political party to be final and conclusive

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18C. The decision of a political party or any person authorised by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and *no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.* (Emphasis added.)

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So clearly the court is restrained from questioning the decisions made by the disputing parties of a political party at their respective meetings. The concluding phrase in s 18C as we underscored above was considered by the Court of Appeal in *Pendaftar Pertubuhan Malaysia v PV Das (Bagi Pihak People’s Progressive Party of Malaysia (PPP)) (Datuk M Kayveas, intervener)* [2003] 3 MLJ 449; [2003] 3 CLJ 404, where the court, with which we agree, held that:

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[1] Effect must be given to the intention of Parliament in legislating s 18C of the Societies Act 1966. In s 18C, Parliament did not stop at the words ‘shall be final and conclusive and ... shall not be challenged, appealed against, reviewed, quashed or called in question in any court’. It went further to provide ‘... on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision’. These words clearly show that Parliament intended to exclude the jurisdiction of the courts. Also, the dispute regarding the validity of the Extra Ordinary Delegates Conference, the election of Datuk M Kayveas and his supporters as president and Office Bearers respectively, the validity of the voting done and the resolutions passed etc, were decisions of a political party on any matter relating to the affairs of the party within s 18C.

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[38] For the above reasons Question 2 is also answered in the negative.

Question 3 and Question 4

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[39] These two questions may be discussed together. Section 13(1) of the Act states that:

- A** 13. Cancellation and Suspension
(1) Subject to subsection (2), the Registrar may, in the following cases, cancel the registration of any society registered under section 7 —
(c) if the Registrar is satisfied —
- B** (ix) that the society has failed to comply with the notice served by him under subsection 16(1).

C [40] Learned counsel for the respondent argued that the usage of the word ‘may’ in the opening line of that section necessitates the ROS to exercise his discretion, meaning that he has to look at the reasons given by a society for its non-compliance before deciding to cancel its registration. As such there is no room for the ROS to exercise his power mechanically.

D [41] It was next argued that although the Act is silent on the requirement to furnish reasons for his decision to cancel the registration, the rules of justice under common law demand that reasons be given for all administrative decisions, citing, inter alia, *Rohana bte Ariffin & Anor v Universiti Sains Malaya* [1989] 1 MLJ 487, and *Padfield v Minister of Agriculture Fisheries and Food* [1968] 1 All ER 694.

E [42] Also, according to learned counsel the action to de-register a society is a decision which adversely affects one’s fundamental rights to freedom of association under arts 8 and 10(1)(c) of the Federal Constitution and that it must thus defer to procedural fairness.

F [43] The Court of Appeal made a finding that the ROS had acted arbitrarily in cancelling the registration of SNAP.

G [44] It is our considered opinion that s 16(1) empowers the ROS to direct SNAP to put its house back in order. In other words the ROS merely gives SNAP an ultimatum to settle the dispute or face the peril of cancellation under s 13(1)(c)(ix). The phrase used in sub-s (1)(c) is ‘if the Registrar is satisfied’. ‘Satisfy’ as defined in *The Concise Oxford Dictionary* is to ‘be certain in one own’s mind’, meaning that a subjective test is to be applied to the ROS in considering whether there has been compliance with the s 16(1) notice.

H [45] The notice dated 2 July 2002 sent to the secretary general of SNAP simply states that the party are to take steps to settle the dispute within one month. Section 16(2) of the Act states that:

I 16(2). If any such notice as is provided in subsection (1) is not complied with to the satisfaction of the Registrar within the period of one month or any extension thereof allowed by the Registrar, the Registrar may take steps to cancel the registration of the society under section 13.

[46] Now that the ROS having been satisfied that there has been a non-compliance of his notice, he can act under s 13(1)(c)(ix) of the Act to cancel the registration of SNAP. Thus, if no evidence of any settlement to the dispute is forthcoming from SNAP and if the ROS is satisfied that there has been a failure to comply with the s 16(1) notice, then he may cancel the registration of SNAP.

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[47] We agree with the respondent that this is an exercise of discretion by the ROS. But in so doing, the statute has provided him only two basis when deciding to de-register SNAP. He cannot consider other matters, as submitted by the respondent, outside the ambit of ss 16(1) and 13 of the Act. In that sense his discretion is fettered within the confines of the law. It is not absolute. It is in this regard that the ROS had to act mechanically within his mandate under s 13(1)(c) of the Act. Now, even if the discretion is an absolute one, the basic proposition is that 'the courts do not probe into the merits of a discretionary action or decision. The courts will not question a discretionary decision on such grounds as to whether it was correct or proper, right or wrong. Also the courts will not substitute its own discretion for that of a concerned authority', (see the commentary by MP Jain in *Administrative Law in Malaysia and Singapore* (2nd Ed), p 340).

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[48] In *Electrical Industry Workers Union v Registrar of Trade Union & Anor* [1976] 1 MLJ 177, a case seeking to declare that the Registrar of Trade Unions has no power to rule on the eligibility of the workers to join the trade union or forbid the trade union from taking the said workers as its members, Lee Hun Hoe CJ (Borneo) gave this advice:

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I think the court must decline to exercise its discretion in making any declaration which would fetter the registrar in the exercise of his duties imposed upon him by the Ordinance.

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[49] With regret, we have to disagree with the Court of Appeal in finding that the ROS had in this instance acted arbitrarily.

[50] On that premise, we answer the third question in the affirmative.

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[51] The only basis for cancellation of a society's registration under s 13 is for non-compliance of a s 16(1) notice. As earlier stated, and we repeat for emphasis, once the ROS is satisfied on this failure to comply he may, accordingly act, to de-register a society.

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[52] The decision to de-register SNAP is merely consequential to the failure of SNAP to comply. Once the conditions stated in the s 16(1) notice have not been satisfied, the operation of s 13 is triggered. No reasons are required under

A the law; no reasons need to be given. The Supreme Court in *Minister of Labour, Malaysia v Sanjiv Oberoi & Anor* [1990] 1 MLJ 112; [1990] 1 CLJ 200 held that ‘the Minister of Labour is not required to give any reasons when he exercises his discretion ...’

B [53] There is no requirement for the ROS to conduct any formal hearing before exercising his power under s 13 of the Act. No presentation of testimony, evidence or arguments are needed. In short, it is not a judicial adjudication process. There is no evidence of any bad faith or bias against SNAP when the ROS acted under s 13(1)(c)(ix). His action is more administrative than quasi
C judicial, even though the rights of SNAP were affected. We thus follow the decision of the Supreme Court in *Sanjiv Oberoi* in holding that a reasoned decision is not necessary. The s 16(1) notice was clear in its terms and the only prejudice suffered by SNAP was due to its own doing, for not complying with the conditions specified in that notice. *Rohana* was a decision of the High
D Court where it was stated by way of obiter that a reasoned decision can be ‘an additional constituent of the concept of fairness’. It should not be taken as a proposition of the general law guiding the exercise of an administrative decision. Furthermore, that case involved a judicial review of a decision of a disciplinary board, which is a quasi judicial making body.
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[54] As regards the argument by the respondent that the ROS’s decision had adversely affected his fundamental rights under arts 8 and 10 of the Federal Constitution, we hold that there is no merit in this stance. Firstly, we observe
F that this was never the pleaded issue of the respondent. His grounds for seeking reliefs were premised on the Wednesbury unreasonableness and procedural impropriety by ROS in not affording the respondent a reasonable opportunity to be heard. In other words a breach of the *audi alteram partem* principle.

G [55] Secondly, this case has nothing to do with equality before the law or on freedom to form associations. The matter before us relates solely to the power of the ROS and the circumstances where he may cancel the registration of a society. This court has been asked to consider if the ROS has correctly applied s 16(1) of the Act and s 13 of the Act. That’s all.
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[56] The answer to Question 4 therefore has to be in the negative.

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[57] For these reasons, this appeal is allowed with costs fixed at RM20,000 to the appellant. The order of the Court of Appeal is set aside. The High Court order is accordingly restored.

Appeal allowed with costs, the Court of Appeal's decision set aside and decision of the High Court restored.

Reported by Ashok Kumar

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